ABDUL KADIR v. PUBLIC PROSECUTOR

[A. Cr. J. (Rigby J.) March 1, 1960]

[Penang — Criminal Appeal No. 2 of 1960]

Criminal Procedure — Sentence — Making false declaration in connection with application for Federal citizenship.

A sentence of six months' imprisonment held not excessive for the offence of making a false statement in an application for Federal citizenship.

MAGISTRATE'S CRIMINAL APPEAL.

Triptipal Singh for the appellant.

L. A. Massie (Legal Adviser) for the respondent.

Rigby J. (delivering oral judgment): The appellant in this case pleaded guilty to the charge preferred against him of making a false declaration on the 10th June, 1958, in connection with his application to be granted Federal citizenship. He was sentenced by the learned President of the Sessions Court to six months' imprisonment. He now appeals against that sentence.

The appellant is a native of India. For the purpose of obtaining citizenship by registration it was a necessary condition that he should have resided in the Federation during the 12 years immediately preceding the date of his application for periods amounting in the aggregate to not less than 8 years. In the declaration that he made the periods stated by him amounted to over the requisite period of 8 years and as a result his application for Federal citizenship was granted and he was registered as a Federal citizen. Subsequently, on the 3rd March, 1959, the appellant went to the Immigration Department, with the object of obtaining a Malayan passport. The Indian passport which he then held was checked and it was ascertained from the entries in that passport that he had, in fact, been resident in the Federation for a total period of less than 8 years within the 12 years immediately preceding the date of his application for registration. In consequence the appellant was charged with this offence, and he pleaded guilty to the charge.

Mr. Triptipal Singh, who has appeared on behalf of the appellant, informs me that the appellant is illiterate and that he has, in fact, been residing in the Federation since 1930 for periods totalling in the aggregate, up to 1960, a matter of some 16 years. The relevant period for the purpose of the application is, however, 12 years immediately preceding the date of the application. Mr. Triptipal Singh informs me — and, indeed, that was the statement made by the appellant in mitigation before the learned President of the Sessions Court — that for the purpose of preparing his application he went to a petition writer, whom he knew personally, and the information required for the purpose of the application was taken by the petition writer from the appellant's own passport. The appellant, therefore, attributes the blame for the inaccuracy contained in the declaration subsequently signed and sworn by him to the petition writer.

Mr. Massie, Legal Adviser, seeks to support the sentence on the ground of the prevalence of this particular offence at the present time, and indeed, the serious nature of the charge itself. It may well be that a different Court might have imposed a lesser sentence, but the question for my consideration is as to whether the sentence was so manifestly excessive or wrong in principle as to justify me in interfering. I am in agreement with the learned Legal Adviser and, indeed, with the learned President of the Sessions Court, that this is a serious type of offence and, in cases where it is discovered, requires exemplary punishment. In all the circumstances of this case, despite whatever sympathy I may have for the appellant having regard to the lengthy period of time that he has, in fact, resided in the Federation since he first came here in 1930, I find myself unable to say that the sentence of six months' imprisonment, having regard to the offence committed by him, is excessive. The appeal must accordingly be dismissed.

Appeal dismissed.

CHARNJIT SINGH v. TAN CHOK HOW

[A. C. J. (Ambrose J.) March 15, 1960]

[Singapore — District Court Appeal No. 33 of 1959]

Practice and Procedure — Costs — Exercise of discretion by District Judge — Successful plaintiff deprived of costs — Payment of judgment debt by instalments — Opportunity to cross-examine defendant — Terms as to security — Courts Ordinance (Cap. 3), s. 79.

In an action brought by a moneylender, the District Judge refused to award costs to the successful plaintiff, on the ground that he had acted oppressively by delaying the institution of the action for two years and eleven months and thereby allowing interest to accumulate at the rate of 48% per annum. The District Judge also made an order for the payment of the judgment debt by instalments.

Held: (1) the District Judge had failed to exercise his discretion judicially in not awarding costs to the plaintiff, as the delay on the plaintiff's part did not amount to misconduct;

(2) the District Judge was wrong in making the order for payment of the judgment debt by instalments without giving the plaintiff an opportunity to cross-examine the defendant as to his means and expenditure and to bring evidence to rebut the statements of the defendant as to his financial position;

(3) the words "on such terms as to security or otherwise as the Court thinks just" in section 79 of the Courts Ordinance mean on such terms as to security or on no terms as to security as the Court thinks just; they do not mean on such terms as to security or something in the nature of security as the Court thinks just.

DISTRICT COURT APPEAL.

K. K. Bezboruah for the appellant.

Respondent in person.

Ambrose J.: In this action the District Judge held that the plaintiff, who is a moneylender, had acted oppressively by delaying the institution of proceedings against the defendant

for two years and eleven months and thereby causing interest to accumulate at the rate of 48% per annum. On this ground he refused to award the successful plaintiff his costs. In my opinion, what the District Judge regarded as delay did not amount to misconduct on the part of the plaintiff and was, therefore, no ground for depriving the plaintiff of his costs. For this reason I decided that the District Judge had failed to exercise his discretion judicially. I accordingly set aside his order as to costs, and ordered the defendant to pay the costs of the plaintiff.

The District Judge made an order for payment of the judgment debt by instalments of $5 per month, basing his order on an offer made by the defendant which was not accepted by the plaintiff. The plaintiff was not given the opportunity of cross-examining the defendant as to his means and expenditure. Neither was the plaintiff given the opportunity of rebutting the statements made by the defendant as to his financial position. For these reason I set aside the instalment order.

It remains for me to add that I did not accept the contention of counsel for the appellant, that the District Judge erred in law in making the instalment order without imposing terms as to security. Counsel relied on section 79 of the Courts Ordinance which provides as follows:—

"(1) Where a judgment is given . . . by a District Court under which a sum of money is payable, ... the Court may, at any time as it thinks fit, for sufficient reason and on such terms as to security or otherwise as the Court thinks just, order the money to be paid either —

(a) in one sum . . . . . ; or

(b) by such instalments . . . . as the Court may fix."

It was submitted that the words "on such terms as to security or otherwise as the Court thinks just" mean on such terms as to security or something in the nature of security as the Court thinks just. In my opinion, these words mean on such terms as to security or on no terms as to security as the Court thinks just.

Appeal allowed.

SNG TONG WEN v. NATIONAL ENGINEERS LTD.

[A. C. J. (Rose C.J.) April 1, 1960]

[Singapore — District Court Appeal No. 39 of 1959]

Landlord and Tenant — "Premises" — Demolition — Control of Rent Ordinance (Cap. 242) — Construction of s.15(1)(k).

The word 'premises' in section 15(1)(k) of the Control of Rent Ordinance (Cap. 242) is not limited to any particular type of premises. It covers both premises of a permanent and of a temporary character. Nor is paragraph (k) itself limited in its application to such demolitions as are necessary in the interests of town improvement in a built-up area only.

Case referred to:—

(1) *Services Ltd.* v. *Wong Liang Toon & Ors.* [1959] M.L.J. 111.

DISTRICT COURT APPEAL.

Lim Kean Chye for the appellant.

C. E. N. Arkell for the respondents.

Cur. Adv. Vult.

Rose C.J.: The appellant was one of nine defendants against whom orders for possession were made in favour of the plaintiffs under the provisions of section 15(1)(k) of the Control of Rent Ordinance (Chapter 242).

Section 15(1)(k) reads as follows:—

"15. — (1) In the case of all premises such an order or judgment as is referred to in section 14 of this Ordinance may be made in any of the following cases, namely:—

(k) where the landlord of any premises intends to demolish the premises or any part thereof for the purpose of rebuilding on the site or part thereof and the court is satisfied that such demolition is necessary in the interests of public health or town improvement either by reason of the condition of the building or otherwise;".

The appellant alone of the nine defendants is appealing and submits that paragraph (k) should be limited in its application to premises of a permanent character in a built up area.

In support of his argument learned counsel for the appellant points out that paragraph (i) was manifestly designed to deal with buildings of a temporary character and that the requirements of that paragraph are more strict than those under paragraph (k).

Be that as it may, the wording of paragraph (k) viz., "where the landlord of any premises intends . . . . ." is, in my opinion, general and not susceptible of limitation to any particular type of premises. As they stand, the words would appear to cover both premises of a permanent and of a temporary character. It may well be, as learned counsel for the appellant suggests, that in practice landlords find it more convenient to ignore paragraph (i) and proceed under paragraph (k). That circumstance, however, in my opinion, does not entitle one to introduce a limitation to the phrase "any premises" in paragraph (k) which the legislature has not thought fit to impose. The case of *Services Ltd.* v. *Wong Liang Toon & Ors.*(1) bears upon the matter.

As regards the second submission made on behalf of the appellant, I am unable to accede to the proposition that paragraph (k) is limited in its application to such demolitions as are necessary in the interests of town improvement in a built up area only. The paragraph itself contains no such express limitation and having regard to the character and the restricted area of the State of Singapore there is, in my opinion, insufficient ground for implying any such limitation. Indeed, practical considerations must lead one to a contrary conclusion.